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CHARGE,

OF

THE HONORABLE JOHN B. ROBINSON,

[illegible]

TO

THE GRAND JURY,

AT TORONTO,

[illegible]

TORONTO:
[illegible]
1838.

CHARGE,

OF

THE HONORABLE JOHN B. ROBINSON,

CHIEF JUSTICE OF UPPER CANADA,

TO

THE GRAND JURY,

AT TORONTO,

(THURSDAY, 8TH MARCH, 1838,)

ON OPENING THE COURT APPOINTED BY SPECIAL COMMISSION TO TRY PRISONERS IN CUSTODY ON CHARGES OF TREASON.

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TORONTO:

R. STANTON, Printer to the QUEEN'S Most Excellent Majesty.

1838.

CHARGE, &c.

MR. FOREMAN; and,

GENTLEMEN OF THE GRAND JURY:

Under a Statute lately passed, the Special Commission which you have just heard read, has issued into this District for the trial of all offences of High Treason, Misprision of High Treason, or Treasonable practices, committed in any part of this Province.

You will observe two peculiarities which distinguish this Court from those convened under the ordinary Commissions of Oyer and Terminer and General Gaol Delivery.—Its jurisdiction is in one respect more comprehensive, as you have authority to inquire into offences committed out of the limits of your District;—in another respect it is much more confined, as the Commission gives you no power over any other crimes than those which it especially enumerates, namely, High Treason, Misprision of Treason, or Treasonable practices. This deviation from the ordinary course of justice in criminal proceedings, is in accordance with what has repeatedly taken place in England under like circumstances; and indeed the peculiar method of conducting trials for Treason, and for Misprision of Treason, renders it nearly impossible that they should be disposed of under the usual Commissions of Gaol Delivery.

The humane care of the Legislature to provide every reasonable safeguard for persons who may be innocently accused of the highest crime known to the law, has led them to give to prisoners various facilities and means of preparation for their defence—namely, a copy of the Indictment found against them, with a list of the Jury, and of the Witnesses for the prosecution—all which they must be furnished with ten days before their trial; and the time which must thus elapse, between their

being indicted and arraigned, occasions a greater delay than is consistent with the necessary despatch of business upon the circuits. For this reason, a Special Commission is commonly resorted to for the trial of such offences; and there is another cause, namely, the indulgence permitted to the prisoner, of challenging a much greater number of Jurors than is allowed in other cases, which of course makes it necessary that more should be in attendance than are usually summoned for the Assizes. It is desirable, besides, that in cases of this description, which more especially affect the peace and safety of the whole community, the guilt or innocence of the persons charged should be ascertained with as little delay as is consistent with a due regard to the ends of public justice; and therefore it is probable, that even if there were not those other reasons which I have mentioned for bringing offences of this nature before a special tribunal, they would, nevertheless, not be left to await the sitting of the ordinary Criminal Court.

Trials for High Treason are happily not very frequent in any part of the British Empire. A generation has nearly passed away since a Court similar to the present was convened in this Province, the only one which, until this occasion, it had been found necessary to assemble in Upper Canada. The Special Commission to which I allude, issued during the last war with the United States of America, when some of the inhabitants of this Province, regardless of their duty of allegiance to their Sovereign, were found traitorously adhering to the enemy, assisting them in some cases with their arms, in others with their counsel and information, and thus doing more grievous injury to their country and to their fellow subjects than a much greater number of public enemies could have accomplished. The motives to this treasonable conduct were probably various. Some were influenced, perhaps, chiefly by the hope of gaining personal advantage to themselves by favoring an enemy who they imagined must succeed in making him-

self master of this Colony; others, no doubt, were led to betray their country, and to forfeit their allegiance, from entertaining political opinions which, if they had been the citizens of a republic, might not have been out of character, but which led them to violate the strongest obligations of duty, both civil and religious, when they prompted them to join the enemies of their Sovereign, and to turn their arms against the Government which had protected them.

It is scarcely necessary to say that the prisoners into whose cases it will be your duty to inquire, cannot be charged with the same description of treasonable acts,—that is, they cannot have been adhering to the public enemies of the Queen, because Great Britain is engaged in no public war. But the violation of allegiance in time of peace, by levying war against the Sovereign, is an act of Treason involving the same degree of guilt, both in a legal and moral view, and is frequently productive of more misery to the community, whose laws are thus offended, than any assistance that can be given to an open and public enemy.

It is not my intention, Gentlemen, while we are thus upon the threshold of the investigation committed to us, to enter minutely into the particulars of those events which have recently disturbed the peace, and threatened the security of this Colony; on the contrary, I desire to avoid, as far as can be properly done, any allusion to those specific facts which it will be necessary for you to inquire into, in order that you may approach the discharge of your duty with minds as much as possible unbiased. But a reference to the leading features in those occurrences which have rendered this Special Commission necessary, seems indispensable; and we need not affect to be ignorant of what has been too painfully forced upon the attention of ourselves, and of every one around us.

Until the close of the past year, this Province wore the appearance of universal peace, and of perfect security; the

pressure of commercial difficulties, which so much distressed the neighbouring country, was of course felt by us, but in a much less degree; our Legislature had occupied themselves sedulously in advancing various works of public improvement, and in endeavouring to ward off from this Province the difficulties which seemed to beset almost every other country; the laws were every where submitted to, and justice was administered through its usual channels, as free from any circumstances to create excitement, or disturb its ordinary course, as could have been the case in any country, at any time. It is ascertained that Upper Canada contains about 400,000 souls; and I believe I may say, with that strict adherence to accuracy which becomes this place, that it would have been difficult to point out any portion of the world where an equal number of persons were at the same time living in a state of more general tranquillity and contentment—in the more perfect possession of every right and liberty which is consistent with human happiness, and apparently enjoying in more entire security the fruits of their labour, and all other advantages which it is the object of good government to guard.

I do not mean to say that there were no efforts used to excite discontent, or that there were no exceptions to that cheerful and grateful acknowledgment of blessings enjoyed, which will generally be exhibited by the great majority of a virtuous people. Undoubtedly there were such exceptions, and so there always have been, and always will be, while human nature is imperfect, and until envy, jealousy, and a restless ambition, shall be no longer suffered to mar the happiness of mankind. But the workings of these bad passions, from which no community is free, had hitherto led to no acts of violence, nor indeed to any interruption of the ordinary current of affairs. They had chiefly shewn themselves in those railing accusations at public meetings, and in public papers, against the Civil Authorities of this Province, and of our Parent State, which have of late

years become so common throughout the world, that it has been perhaps imprudently concluded that they had nearly lost their influence over the minds of men.

But unfortunately in the Colony of Lower Canada, which joins upon this Province, a considerable number of the inhabitants, of French origin, had been instigated to take up arms against their Sovereign, upon what pretext, or under what influence, it does not concern us here to inquire. The fact is, that an extensive insurrectionary movement was planned, and about the close of last autumn it was attempted to be put in execution. For some time before this attempt was openly made, the misery of civil war, the greatest perhaps that afflicts mankind, was seen to be approaching, and we can have no doubt that the guilty design was formed by a few desperate persons in this Province, to make common cause with the insurgents. We cannot doubt this, I say, because it was openly proclaimed—so openly and undisguisedly, indeed, that the cause of the late movement in this District, so far as we may believe the authors of it, was quite as palpable and undeniable as the effects have been.

Without referring to the individual part taken by any one of the one hundred and forty-nine prisoners, whose names are on the calendar returned by the Sheriff, I will, in a few words, state what has now become matter of history; that many hundreds of persons in this District, and in the District of London, arrayed under leaders who have since, with few exceptions, fled from justice, appeared openly in arms against the laws, for the purpose, unreservedly avowed, of subverting by force the Government of their Sovereign, and of destroying the Constitution of this Province.

I need not recall to your mind by what cruel and wicked means they were willing to carry these criminal designs into effect. It cannot be forgotten, that at the very moment when the highest civil and criminal Court of this Province was in

actual session, a large armed force was hovering around this Capital, in open defiance of the laws, and threatening the destruction of the Government; plundering the public mails in the Queen's highway; burning the dwelling-houses of their fellow-subjects; and not hesitating to incur the guilt of murder. Happily their efforts were frustrated, before the measure of their intended crimes was full. The number of those who could thus rashly and wickedly cast aside the ties of allegiance—the obligations of gratitude—the dictates of conscience—the precepts of religion, and the prospect of future happiness and peace for themselves and their families; the number of such, I say, was infinitely small in comparison with the whole loyal people of Upper Canada. It required therefore but little time to restore the reign of peace, and the supremacy of the laws; but enough of evil has nevertheless been suffered in consequence of this senseless and wicked insurrection, to give fair warning of the miseries which must follow in the train of civil war; and it cannot be foreseen what desolation may yet be brought upon this lately peaceful country, by the audacious act of unfurling in it the standard of rebellion.

We see that it has encouraged multitudes of foreigners upon our border to intrude themselves violently into our country, in the hope of plunder; it has diverted the great mass of our people from their industrious pursuits to the dangerous and unprofitable and demoralizing occupation of war; and it has led to such infractions of treaties, and to such unjustifiable aggressions upon the peace and honor of our country, as, it is feared, may lead to very deplorable consequences.

For the part which they are charged with having taken in this criminal enterprise, or for their connection with it before or after it was matured, the many prisoners whose names appear on the calendar, and perhaps a still greater number who are out on bail, stand at present accused of one or other of the offences which alone you are authorised under this Commission to inquire into.

Of the facts of any particular case, this Court are, like yourselves, wholly ignorant; but it is reasonable to suppose, that most, if not all of those in actual custody, are charged with the crime of High Treason, the highest offence known to the law.

With respect to the enormity of this crime, it cannot be necessary that I should insist upon it—it strikes at the very root of all social order. To protect life, liberty and property, laws are necessary; and these laws can only be enforced by officers clothed with regular and defined authority, and responsible to a governing power, which can uphold and keep together the social fabric. When attempts are made to overturn this Government by force, then the danger at once begins of mischief and ruin, of which none can see the end.—From that moment, property ceases to be secure; the independence accumulated by industry may be swept from its possessor in a moment; life and liberty have no protection; the most bold, and worthless, and cruel, become for a time, the instruments of power, as arbitrary as their will; and after a succession of disorders, which interrupt all the useful and agreeable pursuits of life, and involve all by turns in danger and misfortune, the chance of a return to peace, and to some degree of safety, is commonly found in the accession to power of some absolute ruler, less wanton in the abuse of it than his predecessors, whose vigor may supply a security which freemen can only consent to derive from the force of the laws.

But though such are generally the miserable fruits of rebellion against constituted authority, our laws inculcate no doctrine so slavish, as the necessity of absolute submission to every degree of oppression and tyranny that a government can exercise. There may be extreme cases; and in the early history of England there have been cases in which the right of resistence to tyranny has been asserted, with the approbation and countenance of the wise and good. But these were in ages

when the cruelty and vices of rulers were, from the condition of society, capable of exercising a greater and more direct influence over the happiness of the governed, than they can possibly do in the present age. Such are now the restraints upon the individual passions of men in authority, however high, from the effect of more enlightened public sentiments—from the general diffusion of education—from the improvement in national manners—from the operation of science and the arts, in elevating the condition of the great mass of the community—from the refinement of civil institutions, and the gradual amelioration of the laws—and above all, from the discipline of the mind, under the influence of the Christian Religion, unobscured by corruptions and superstition, that it is no longer in the power of a Prince or Governor to sport with the interests and lives of those over whom he rules, to such a degree as to drive them to the desperate remedy of rebellion. And if this be true of any country or people at the present day, it is especially so in respect to the Empire of Great Britain, where the Government is emphatically a Government of the laws, and where a well-balanced Constitution affords the means of obtaining a remedy, without violence, for every injury, public or private. And still more difficult would it be to find an imaginable pretext for rebellion in these favored Colonies of the British Crown, where, besides the security of the law of the land, and the individual characters of the public servants who are in the immediate exercise of authority, an appeal against any abuse they may be guilty of, can be made to the Government in England, which is not from its elevated position more disinterested and unprejudiced, than it is patiently attentive to every complaint, and scrupulously just in controlling its officers.

But as it is unnecesary to enlarge upon the duty of allegiance, in a country whose inhabitants have shewn so strong a sense of the obligation, and so firm a resolution to fulfil it, so there is as little occasion to occupy ourselves in inquiring whether there could be, by possibility, an object which, in this

Province would justify or excuse the desperate measure of assailing the Government with force. Such an inquiry is unnecessary, because the object which the insurgents really had in view, has not been left to be conjectured, it has been openly proclaimed.—It was to subvert the Government—to separate this Colony from the Crown—to usurp the authority which the Constitution and Laws had placed in other hands—to erect a new system upon the ruins of that to which our attachment is pledged, and to wrest from the other inhabitants of this country the property which their Sovereign had given them, or which they had earned by their industry, and to divide it as booty among those who should join with them in their undertaking.

I have thought it by no means inconsistent with our duties here, to address to you these general observations upon matters which most deeply interest the inhabitants of this Province, and which are of such public notoriety, that they have engaged the most earnest attention of our Legislature, and have kept a large portion of our population for some months under arms.

Whether the conduct of each, or any one of the persons whose cases will be brought before you by Her Majesty's Attorney General, has been such as to implicate him in the designs and proceedings to which I have adverted, and to what extent, are questions which you will have to determine according to the best of your judgment, after a patient hearing of the evidence, and a conscientious and dispassionate consideration of its tendency.

Notwithstanding the use of the general term "*treasonable practices*," in the Commission, and in the Statute under which it has issued, I take it for granted that the only charges which will be brought before you, will be for the well defined offences of High Treason, or Misprision of Treason.

With regard to Mispirision of Treason, it consists in the bare knowledge and concealment of Treason, where no assent is given, or act done, which can amount to a participation in

the crime —for any assent makes the party a principal traitor, as indeed the mere concealment did at the common law, upon the principle that it was held to be an aiding and abetting.

But now, by a Statute passed in the reign of Philip and Mary, a bare concealment of treason is declared to be only a misprision. A person is guilty of this misprision, when he is apprised of an act of High Treason, and does not, as soon as conveniently may be, reveal it to some Judge, or Justice of the Peace; but if there be any probable circumstances of assent, as if one goes to a treasonable meeting, hearing before-hand what is intended, or being once in such company by accident, and having heard a treasonable conspiracy, meets the same company and hears more of it, but still conceals it, this is an implied assent in law, and makes the concealer guilty of actual *High Treason.* I give you this account of the offence of Misprision of Treason, very nearly in the words of Mr. Justice Blackstone.

You will observe, he says, that any assent makes the party a principal traitor. That follows from a principle uniformly applied in our law to the crime of High Treason, namely, that all who are concerned in it, are principal traitors. On account of the enormity of the offence, the law refuses to make a distinction, and to establish different degrees of guilt.

The same conduct, which in cases of felony would make a man an accessory, before or after the fact, will make him in High Treason a principal ; a point very important to be constantly kept in view during your inquiries.

To come now to the crime of High Treason itself. I shall not perplex you with a multitude of directions, nor attempt to foresee in how many aspects the cases of those several prisoners may possibly be presented to you; but I shall content myself with endeavoring to state shortly and intelligibly, a few leading considerations, which I hope may enable you to apply with precision such evidence as may be brought before you.

The Statute of Treasons, passed in the 25th year of King Edward the Third, was humanely and wisely intended to protect the Subject against being liable to a multitude of charges of undefined *constructive* Treasons, which placed his life in the discretion of a judge and jury—a discretion which in times long gone by, was too often corruptly exercised. This famous Statute undertakes to define what shall be adjudged Treason, and it leaves all cases which do not come within the description of any of the acts thus specified, to be dealt with "before the King and his Parliament."

When our Legislature in 1833, passed an Act declaring what offences shall be capital, they adopted from the Statute of Edward III. (adhering closely to its language with becoming veneration,) all that it will be material for you on this occasion to attend to. They repeated in words which, from long and frequent application, have now an understood and established sense, "that if a person do compass or imagine the death of our Lord the King," or "if a person do levy war against our Lord the King, in this Province," or "be adherent to the King's enemies in this Province, giving to them aid and comfort in this Province or elsewhere, and thereof be proveably attainted of open deed by people of his condition, such person so attainted shall be deemed guilty of Treason, and shall suffer death."

With respect to the first offence—"the compassing (that is contriving) or imagining the death of the King," it has been always held, that the term "*King*" extends to the reigning Sovereign for the time being, and is therefore applicable where a Queen fills the Throne, as at this time.—The offence of directly attempting the life of the King, or of plotting for that purpose, may seem at first view to be one which can be committed only in the kingdom where the Sovereign resides; but it will readily occur upon reflection, that one resident in another Country, however distant, may

bring himself fairly within this provision, as by sending a person to assassinate the Sovereign, or inciting by letter, persons within the kingdom to commit the Treason, or by contriving a plan to be executed there by others. By such means, any Subject of the Crown, even in this remote Colony, might be guilty of compassing or imagining the Queen's death; though it is most improbable that a case of the kind would ever occur.

But this branch of the Statute has in practice received an extended construction, which it is necessary to consider. It has occurred in many cases, that persons in England, having perhaps no immediate design upon the life of the Sovereign, have planned extensive and dangerous insurrections for treasonable purposes, but from their schemes being detected before they could be put in execution, they came not within that branch of the Statute which makes it Treason "to levy war against the King in his realm." It has been constantly held, however, (and by no forced or unreasonable construction,) that acts done in the prosecution of such a design to levy war, were evidence to prove "a compassing or imagining the death of the King," since no man could answer but that, amidst the tumults of a civil war, the blood of the Sovereign might be shed; and as this was far from being an unlikely consequence, it has been held not unjust to ascribe to the mover of such criminal designs the imagination of such calamities as are likely to follow from them.

Here, again, it will be apt to appear to us at first sight, that the principle on which this construction turns, cannot apply in this Colony, so remote from the residence of the Sovereign. It may be very reasonable to apprehend, that a civil contest begun in the United Kingdom, may endanger the life of the King, from his being within the immediate reach of whatever violence may ensue; but it does not seem obvious how a person laboring to excite rebellion in a transatlantic Colony, can be justly said to compass or imagine the death of

the King, who is so far removed from the scene of the intended contest.

It has, however, been determined that the construction does not merely hold with respect to the realm of England.—The King, in contemplation of law, is present every where in his Dominions; he is the head of the nation, which is to be regarded as composing one great family. In point of fact also, it is impossible, when the flame of rebellion is lighted up in any part of the Empire, to foresee when or where the calamity may end, or how widely it may spread. A rebellion in Ireland, for instance, might occasion such distraction of counsels and forces, and give such encouragement to other criminal projects, that it might endanger the peace of the whole Empire, and the personal safety of the Sovereign; and if upon such considerations, the attempting to raise a rebellion in Ireland must be held to be, as it has been, an overt act of compassing the King's death, I know of no legal principle which would warrant us in being governed, by the mere circumstance of comparative distance, in drawing a distinction. If the construction must be admitted to apply to any part of the Queen's Dominions beyond the Kingdom of Great Britain, it would seem to follow, that it must have an universal application within the circle of the Empire.

It is only because it may possibly happen, from the peculiar circumstances of some one of the many cases that may come before you, that it may become necessary to advert to the bearing of this branch of the Statute, that I have thought it right to notice it. It does not seem to me likely, that such a necessity will occur, (though I can conceive cases in which it may,) since the designs which we may suppose have given rise to most, if not all of these cases, have resulted in an actual levying of war; and when the evidence establishes a participation in a treasonable plot, which has broken out into action, there is no occasion to consider what would have been the effect of merely

contriving the insurrection, as applied to this first branch of the Statute—the compassing or imagining the King's death.

I proceed now to the second specification of High Treason, namely, "the levying war against the Queen in this Province;" and this you will at once feel to be the most clearly relevant to the subject of your inquiries. To make the levying of war Treason, the object in view must be treasonable. It is not merely the using warlike weapons unlawfully, to accomplish an evil purpose, that will constitute the levying of war, however numerous may be the party engaged. We must consider the design—if it be to remove a nuisance; to revenge an affront upon a private person, or a like purpose, not public and general in its nature, it will amount but to a riot. But if the object be such as makes it a rebellion against the State, an invasion of the Queen's authority, then it is a treasonable levying of war within the Statute. Upon this point I will not further enlarge.

If a treasonable levying of war shall be established, you will next have to consider in each case, by what act, and in what manner, the individual accused is connected with it, by the evidence.

When he has been one of the party engaged in the levying of war, the case will be simple and direct. If he were not thus engaged, then you will bear in mind the principle I have already alluded to, that all who are accomplices in the levying of war, all who would be accessaries before or after the fact, if the crime were felony, incur the guilt of the principal traitors; though it will be proper that the indictment should describe their conduct according to the facts, and not charge them with the actual levying of war, unless they were engaged in it. Any acts of assistance, as by furnishing arms, provisions, money, ammunition, intelligence or advice; assenting to and countenancing the design; persuading others to join in it; corresponding with persons with a view to promote it, even though the letter be intercepted, and have no effect; and generally, any act in

furtherance of the rebellion, either before or during its existence, so also the knowingly affording assistance or protection to any traitor after the fact; all these things make the person so acting, a partaker in the Treason.

With respect to the third specification in the Statute—"the adhering to the enemies of the Queen within this Province," I have already explained that public enemies are here referred to, not rebels or traitors. There is still, however, a possible case, in which this branch of the Statute may come to be considered, and that is, where the subjects of another Government, which is at peace with us, invade this Province, and carry on war without the authority of their Prince or State,—there they are looked upon as enemies, (for owing no allegiance they are not traitors) and the subjects of her Majesty adhering to them, giving to them aid and comfort in this Province, or elsewhere, will come under this division of the Statute. But the offence of merely inciting foreigners to invade this Province, if those foreigners belong to a country at peace with us, can only be treason as an overt act of compassing the Queen's death, with respect to which, and indeed to all that I have said on this first head of Treason, and its possible application in this Province, I wish to be understood as speaking subject to a more deliberate consideration of any such question that may happen to present itself.

I would here, Gentlemen, gladly conclude this very imperfect sketch, which I am sensible has extended to a tedious length; but I must touch, however shortly, on a few more points necessary to be considered.

British subjects, whether by birth or naturalization, owe allegiance to the Crown, and therefore incur the guilt of Treason by rebelling against the Queen's authority. So also the subjects of foreign countries, residing under the protection of

our laws; they owe, in return for that protection, a local allegiance, and incur the same penalty as natural-born subjects, if they violate that allegiance.

But the mere subjects or citizens of a foreign country in amity with Great Britain, making war upon us without a commission from their Government, cannot be treated as traitors, because having received no protection, they owe no allegiance.

Their hostile acts place them at the mercy of a Government whose rights they have violated, but they come not within our jurisdiction, under this Commission. There is a late Statute passed in this Province, with a view to the prompt and convenient punishment of such offenders acting in conjunction with rebels; but we have no concern with it, sitting under this Special Commission.

You will bear in mind that by law, the proof of foreign birth lies in all cases upon the prisoner, where he rests his defence upon it. In other words, when charged with any crime committed within the Queen's Dominions, he will be presumed to be a British Subject until he shews the contrary.

I need scarcely remark to you, that acts, however treasonable in their nature, when they are shewn to have been committed upon compulsion, do not incur the guilt of Treason. I mean, acts committed from the fear of death, and while the party was under actual force, so that he could not escape but with great difficulty and danger; but an apprehension of having property destroyed, or of any other mischief of that kind, will not excuse the joining with rebels or enemies.

I have left to the last, the statement of some very important and humane provisions of the Statute Law of England, because they are such as it is most necessary, on behalf of the prisoner, that you should bear fully in your minds. The Statute of 7 William III. ch. 3, enacts, that no person shall be indicted of any such crime of High Treason as I have referred to, or of

Misprision of such Treason, unless upon the oaths of two lawful witnesses, either both of them to the same overt act, or one of them to one, and the other to another overt act of the same Treason, unless upon his own confession of his guilt, which confession it has been determined is admissible in evidence, though not made upon his arraignment in open Conrt; but it will not be sufficient alone, unless it be satisfactorily proved by two witnesses. By overt acts are meant open deeds, for the Treason must proceed beyond the mere imagination of the heart. Neither can mere words, however treasonable in their import, constitute of themselves an overt act of Treason; but words of advice, consultation, encouragement, persuasion, or information, spoken in furtherance of a treasonable purpose, may constitute an overt act of one or other species of Treason.

This same Statute also provides, that the prisoner shall have certain advantages for conducting his defence, to which I have already alluded, and which the Court will be scrupulous in attending to.

There are other matters which in any comprehensive view of this branch of the law should not be omitted; and indeed those which I have touched upon, call for many explanations and statements of distinctions, which must be left till the several cases come under discussion. I do not feel that I need attempt at present a more minute exposition of the law; and nothing should have led me to trespass so long upon your attention, but a strong sense of the painful responsibility of your duties, and of their great importance to the future peace and safety of the Province on the one hand, and on the other hand, to the lives and fortunes of the parties accused.

I am sure there can be none who are concerned in the administration of justice upon this solemn occasion, who do not deeply lament the wicked insurrection in which these prisoners are charged, whether justly or not, to have participated; and

the miserable consequences which it has entailed upon a multitude of persons, who might have been living at this moment in the enjoyment of peace, health, liberty, abundance and security, but who are now either fugitives from their families and their country, or evading amidst painful privations the process of the law, or after many weeks of tedious confinement, are at length about to be arraigned at the bar of justice. How much happier would you all have been if no occasion had arisen for your discharging such painful duties as are now imposed upon you; and how incomprehensible almost does it seem, that in a country situated as this is, such an occasion could have occurred.

There is no setting limits to the irregular desires and unreasonable expectations of ill constituted minds. If it were otherwise, one would have supposed that rebellion against the Government of this Province could scarcely have found a single adherent. I have long been intimately acquainted with that portion of this District from whence the principal armed band of people came to threaten this town with devastation, and to insult and defy the laws, under whose protection many of them had lived in secutity and peace from their childhood. I have always regarded it as the most favored portion of the Province.—Enjoying the advantage of a climate as decidedly healthful and agreeable as can be found in this Province, or perhaps upon this Continent, and a soil remarkably fertile, with the general aspect of the country such as cannot be seen without attracting admiration, I have often thought the industrious possessors of this inviting land were perhaps the most to be envied of any of the people of Upper Canada; and I must confess myself to have been among the last, who could believe it possible, that those who were in the enjoyment of such blessings could prevail upon themselves fatally to renounce them all, either for the gratification of some unaccountable resentment, or in the mad and guilty pursuit of such imaginary advantages as no

form of Government ever did, or ever can confer. But I will not urge these reflections farther.

It is earnestly to be hoped that the wound which has thus been most unexpectedly inflicted upon our social system, may be speedily and effectually healed, and that suspicions and uneasiness may soon give place to a sense of full and permanent security. Nothing can tend more to the accomplishment of this object than the just, firm, and unprejudiced administration of the laws, so that it may be seen and felt by all, that while nothing is yielded from indifference or fear, so also nothing is urged in a harsh and vindictive spirit. Our excellent system of jurisprudence affords us noble land-marks; and with that independence of mind which the consciousness of just intentions inspires, you will not fail to attain the ends which Courts of Justice have alone in view, wherever the British Constitution maintains its ground—namely, the just punishment of guilt, and the full protection of innocence. You have no other duty to discharge; and I feel a confident assurance, Gentlemen, that you have no other wish to gratify.

Her Majesty's Attorney General, I have no doubt will do all in his power to facilitate your arduous task; and whenever, in the progress of your inquiries, the Court can render you assistance, it shall be readily afforded.